



THE CITY OF NEW YORK
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September 12, 2023

Honorable Nina R. Morrison (*by ECF*)
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Kellner v. City of New York, et al., 17-cv-01268 (NRM) (MMH)

Dear Judge Morrison:

I am an attorney in the office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, counsel for defendants City and the Estate of Charles J. Hynes in this action brought pursuant to 42 U.S.C. § 1983. I write in response to plaintiff's letter of earlier today to the extent that he seeks production of a declaration and exhibits cited in defendants' Local Civil Rule 56.1 Statement accompanying their letter requesting a pre-motion conference for their motion for summary judgment pursuant to Rule 56.

Not only is a declaration with exhibits not required by Your Honor's Individual Practices Rules (see 5.1.2.2.), but assembling these materials would be time-consuming and pose an unreasonable burden to defendants at this stage. It would also defeat the purpose of the Court's holding a pre-motion conference before defendants prepare in full the extensive motion papers required to support a motion pursuant to Rule 56. As plaintiff acknowledges, he has access to the vast majority of the exhibits by referencing deposition transcripts that are in the possession of both sides. Defendants have provided the page and line citations in their statement pursuant to Rule 56.1. The remaining documents, such as correspondence, affirmations, the underlying indictment of plaintiff, and a translation of an important conversation, are readily identifiable by author and date, were disclosed both in this action and as evidence against plaintiff in the underlying criminal matter (for which his current counsel, Niall MacGiollabhui, was also criminal defense counsel). They were also used by plaintiff as exhibits in the depositions that he has conducted in this case.

Thank you for your time and attention to the above.

Respectfully submitted,

/s/Susan P. Scharfstein

Susan P. Scharfstein

cc: All counsel (*by ECF*)